

1 SENATE BILL 33

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

4 Carlos R. Cisneros

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10 AN ACT

11 RELATING TO PUBLIC MONEY; ENACTING THE CAPITAL OUTLAY PLANNING
12 AND MONITORING ACT; INCREASING FISCAL AND PROGRAMMATIC SCRUTINY
13 OF CAPITAL OUTLAY EXPENDITURES; REQUIRING COMPREHENSIVE
14 FIVE-YEAR PLANS; CREATING THE CAPITAL OUTLAY PLANNING COUNCIL;
15 MAKING AN APPROPRIATION.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
19 cited as the "Capital Outlay Planning and Monitoring Act".

20 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
21 Capital Outlay Planning and Monitoring Act:

22 A. "capital project" means a project located in New
23 Mexico that includes the acquisition, repair, alteration,
24 demolition, renovation, construction or reconstruction of a
25 public building or other public works owned by an eligible

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1 entity, including planning and design and professional
2 engineering, surveying, architectural and landscape
3 architectural services directly related to the capital project;
4 purchase of rights of way or easements; purchase of land for a
5 public building or other public works; purchase of water
6 rights; site improvements to public property; purchase and
7 installation of equipment of a long-term nature for a public
8 building or other public works; purchase of furniture; purchase
9 of motor vehicles or heavy equipment; and purchase of
10 information technology;

11 B. "committee" means the legislative finance
12 committee;

13 C. "council" means the capital outlay planning
14 council;

15 D. "eligible entity" means the state, a tribe or a
16 political subdivision or agency of the state or a tribe; and

17 E. "tribe" means a federally recognized Indian
18 nation, tribe or pueblo, or a subdivision or an agency of a
19 federally recognized Indian nation, tribe or pueblo, located
20 wholly or partially within New Mexico.

21 SECTION 3. [NEW MATERIAL] CAPITAL OUTLAY PLANNING
22 COUNCIL--CREATED.--

23 A. The "capital outlay planning council" is
24 created, consisting of:

25 (1) the director of the legislative finance

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1 committee or the director's designee, who shall serve as chair;

2 (2) director of the legislative council
3 service or the director's designee;

4 (3) the secretary of finance and
5 administration; and

6 (4) representatives of the following agencies
7 or other entities who have direct responsibility for planning
8 or overseeing capital projects for their agencies or entities:

9 (a) the capitol buildings planning
10 commission;

11 (b) the facilities management division
12 of the general services department;

13 (c) the cultural affairs department;

14 (d) the local government division of the
15 department of finance and administration;

16 (e) the department of environment;

17 (f) the aging and long-term services
18 department;

19 (g) the higher education department;

20 (h) the department of transportation;

21 (i) the Indian affairs department;

22 (j) the public education department;

23 (k) the New Mexico finance authority;

24 and

25 (l) the New Mexico association of

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1 regional councils of governments.

2 B. The council may invite representatives of
3 federal agencies that provide loans and grants to New Mexico
4 communities for infrastructure and other capital projects to
5 participate in meetings of the council and may invite other
6 participants as it deems necessary.

7 C. The committee shall staff the council.

8 D. Per diem and mileage or any other compensation,
9 perquisite or allowance shall not be paid to members of the
10 council for service as a member of the council.

11 E. The council shall oversee the development of the
12 state capital improvements plan by the committee.

13 SECTION 4. [NEW MATERIAL] STATE CAPITAL IMPROVEMENTS
14 PLAN.--

15 A. The committee shall, with the assistance of the
16 council, prepare and annually update a five-year "state capital
17 improvements plan" that details the capital projects
18 recommended to be undertaken by eligible entities with state
19 aid or under state regulation. The plan shall:

20 (1) include an economic forecast and a
21 discussion of economic activities that bear on the need for
22 state or local infrastructure;

23 (2) include a description of outstanding
24 capital projects being funded with state money, their estimated
25 completion date, their initial cost, their estimated completion

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1 cost and their estimated operational costs for the first five
2 years;

3 (3) classify capital projects with respect to
4 urgency and need for realization and prioritize capital
5 projects that have financial matches from sources other than
6 the state;

7 (4) recommend a time sequence for construction
8 or purchase of specific capital projects;

9 (5) contain an estimated cost of each capital
10 project, as well as the probable operating and maintenance
11 costs of each capital project;

12 (6) identify any revenue that will be
13 generated by a capital project;

14 (7) identify existing or additional sources of
15 funds needed for construction and operation of each capital
16 project;

17 (8) identify the eligible entity that owns a
18 capital project; and

19 (9) provide other information for any capital
20 project or for the state capital improvements plan as
21 determined by the committee.

22 B. All capital project recommendations of the
23 executive shall be based on the state capital improvements
24 plan.

25 C. Beginning in 2018, the committee shall report to

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1 the legislature, including the revenue stabilization and tax
2 policy committee, annually on the status of the state capital
3 improvements plan and modifications made to that plan.

4 SECTION 5. [NEW MATERIAL] CAPITAL PROJECT
5 REQUESTS--GUIDELINES--INFRASTRUCTURE CAPITAL IMPROVEMENTS
6 PLANS--SUBMISSION TO LEGISLATIVE FINANCE COMMITTEE.--

7 A. By January 15 of each year, the committee shall
8 publish capital project guidelines to be followed by eligible
9 entities that plan to seek funding for any capital project in
10 the next year's legislative session. The guidelines shall also
11 identify those provisions that a tribe is required to follow in
12 seeking funding for a capital project.

13 B. The guidelines shall include provisions to guide
14 state agencies that review capital project requests or
15 infrastructure capital improvements plans from eligible
16 entities. The state capital improvements plan and each local
17 government's infrastructure capital improvements plan shall be
18 updated each year. A tribe is not required to provide
19 infrastructure capital improvements plans to the committee.

20 C. The guidelines shall include:

21 (1) a requirement that a state agency or a
22 local government requesting state capital outlay funds is not
23 eligible for that funding if it does not have a completed
24 current audit or has not entered into a plan approved by the
25 state auditor for completion of its audit;

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1 (2) a requirement that a local government be
2 current on its budget and quarterly report submissions to the
3 local government division of the department of finance and
4 administration;

5 (3) a requirement for local government
6 infrastructure capital improvements plans to be submitted to
7 appropriate state agencies;

8 (4) requirements for analyzing immediate and
9 future needs of the state, regions of the state and localities;
10 and

11 (5) requirements for analyzing requests in
12 light of:

13 (a) critical needs of the state and
14 local governments, including health and safety needs;

15 (b) the ability of the local government
16 to provide matching funds for the capital project;

17 (c) the availability of other funding
18 sources for the capital project;

19 (d) the capital project's priority on
20 either the state capital improvements plan or a local
21 government's infrastructure capital improvements plan;

22 (e) the ability to phase the capital
23 project, if necessary, and the availability of funding to
24 complete at least one full, functional capital project phase;

25 (f) the ability of the eligible entity

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1 to provide for the operation and maintenance of the capital
2 project;

3 (g) the expected useful life of the
4 capital project;

5 (h) the available alternatives to the
6 capital project as requested;

7 (i) consideration of whether a
8 renovation project will forestall substantial capital outlay
9 costs in the short and long terms;

10 (j) the most appropriate funding sources
11 for types of capital projects; and

12 (k) other considerations determined by
13 the committee, after consultation with the council.

14 D. By May 1 of each year, all infrastructure
15 capital improvements plans shall be submitted as follows:

16 (1) local government or regional plans that
17 are not otherwise submitted to another state agency are due to
18 the local government division of the department of finance and
19 administration;

20 (2) water and wastewater plans are due to the
21 department of environment;

22 (3) street, road and highway plans are due to
23 the department of transportation;

24 (4) area agency on aging or local aging
25 program plans are due to the aging and long-term services

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1 department;

2 (5) public post-secondary educational
3 institution, special school and tribal college plans are due to
4 the higher education department;

5 (6) state museum, state monument and historic
6 site plans are due to the cultural affairs department;

7 (7) state agency plans for state agencies
8 under the jurisdiction of the facilities management division of
9 the general services department are due to the facilities
10 management division;

11 (8) state and local government plans that are
12 part of master plans approved by the capitol buildings planning
13 commission are due to the capitol buildings planning
14 commission; and

15 (9) capital improvements plans are due to the
16 committee for the New Mexico state fair, state parks division
17 of the energy, minerals and natural resources department, state
18 armory board, tribal infrastructure board, colonias
19 infrastructure board, water trust board, judicial branch and
20 any other capital improvements plans or capital project
21 requests that are not specifically assigned to another state
22 agency.

23 E. All state agencies that are responsible for
24 reviewing capital project requests shall submit their
25 recommendations to the committee by August 1 of the year prior

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1 to the year in which funding is sought. For local government
2 projects, the recommendations shall include comprehensive
3 analysis of the local government's capacity and effort to fund
4 the requested capital project and its ability to operate the
5 capital project, if applicable.

6 F. The committee shall review the recommendations
7 and hold hearings on the recommendations by September 15 of
8 each year. The committee shall report its findings to the
9 governor by October 1 of each year. The committee report shall
10 include proposed changes to the state capital improvements plan
11 and a listing of all capital project requests received,
12 findings of each reviewing agency and findings of the
13 committee.

14 G. The committee shall publish the annual state
15 capital improvements plan, an abstract of which shall be
16 included in the executive budget recommendations for the
17 following fiscal year.

18 H. The committee shall provide the legislative
19 council service, the revenue stabilization and tax policy
20 committee and the secretary of finance and administration with
21 the annual state capital improvements plan at the time of
22 publication.

23 SECTION 6. [NEW MATERIAL] REPORTS.--Every state agency
24 responsible for capital projects shall file electronic
25 quarterly status reports with the committee on appropriations

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1 and expenditures.

2 SECTION 7. APPROPRIATION.--

3 A. One million two hundred thousand dollars
4 (\$1,200,000) is appropriated from the general fund for
5 expenditure in fiscal year 2017 in the following amounts to the
6 following agencies for the following purposes:

7 (1) one million dollars (\$1,000,000) to the
8 legislative finance committee to establish, organize, staff and
9 fund the capital outlay planning council and to carry out the
10 purposes of the Capital Outlay Planning and Monitoring Act; and

11 (2) two hundred thousand dollars (\$200,000) to
12 the office of the state auditor to cover the costs of financial
13 audits or fiscal reviews of local governments that are unable
14 to comply with state audit requirements due to circumstances
15 beyond the control of the local government resulting in lack of
16 funds rendering the local government unable to contract for the
17 conduct of an independent audit or fiscal review.

18 B. As used in this section, "circumstances beyond
19 the control of the local government" does not mean poor
20 management or poor planning on behalf of the governing body,
21 intractable political disputes within the governing body that
22 cause a failure to provide funding for audits or fiscal reviews
23 or failure of the governing body to prioritize the need for an
24 audit or fiscal review when planning the local government's
25 budget.

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C. Any unexpended or unencumbered balance remaining at the end of fiscal year 2017 shall revert to the general fund.

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2016.